

**UNITED STATES DEPARTMENT OF AGRICULTURE**

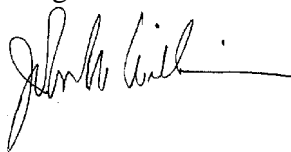
Farm Service Agency  
Washington, DC 20250

**Notice PM-2356**

**For:** FAS, RMA, and FSA Employees

**Rights and Benefits of Reservists Called to Active Duty**

**Approved by:** Deputy Administrator, Management



**1 Overview**

**A Purpose**

Federal and county employees who are members of the Uniformed Services and who are called to active duty, involuntarily or voluntarily, are entitled to certain rights and benefits as outlined in the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA).

This notice outlines those benefits.

**B Benefits Outside of USERRA**

Reservists may be eligible for additional benefits other than those authorized by USERRA. Reservists may refer to:

- <http://www.tricare.osd.mil> for information on Tricare
- <http://www.insurance.va.gov/sglisite/sgli/sgli.htm> for information on the service members government life insurance
- <http://www.govbenefits.gov> for a comprehensive resource for all government benefits.

**C Contact**

For further information on this notice, contact Susan Brown at 202-418-9039 or Darla Hensley at 202-418-9021.

For information on any of the benefits listed in this notice, contact Servicing Personnel Office (SPO), unless otherwise noted.

**Disposal Date**

January 1, 2004

**Distribution**

All FAS, RMA, and FSA employees; State Offices relay to County Offices

## **2 Employee Assistance Program (EAP)**

### **A EAP Services**

EAP provides short-term counseling and referral services to help with financial, emotional, and dependent care problems. EAP can be very helpful to employees and their families in coping with stress and disruption associated with a call to active military duty. These services are available to:

- employees who have been called to active military duty
- employees who are family members of those performing active military duty
- family members of employees.

### **B EAP Contacts**

EAP contacts may be found at: <http://dc.ffasintranet.usda.gov/hrd/eapcontacts.html>.

## **3 Pay**

### **A Pay During Active Duty**

Employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or commission. They will not receive any compensation from their civilian employing agency unless they elect to use military leave or annual leave.

## **4 Federal Employees Health Benefits (FEHB)**

### **A FEHB Coverage**

Employees who are put in a non-pay status while on military duty may elect to keep their FEHB coverage for up to 18 months by paying the premiums on a regular basis or incurring a debt.

**Note:** Employees serving in Operation Enduring Freedom who elect to incur a debt should refer to Notice PM-2347 for information on waiving the employee's premium.

If an employee does not want to continue FEHB coverage while he/she is in non-pay status, the employee may elect, in writing, to have the FEHB coverage terminated. The employee is entitled to a free 31-day extension and the right to convert to a non-group policy.

Employees who separate to serve active military duty may elect Temporary Continuation of Coverage (TCC). On TCC, employees pay their share, the government's share, plus an additional 2 percent administrative fee.

**4 Federal Employees Health Benefits (FEHB) (Continued)**

**B FEHB Coverage After 18 Months**

At the end of 18 months, FEHB coverage terminates. Employees get a free 31-day extension of coverage during which they may convert to a non-group policy.

Employees are **not** eligible for TCC.

**C FEHB and Return to Active Civilian Service**

An employee who has been on active military duty and returns to active civilian service may enroll in an FEHB plan within 60 calendar days of the return to service.

**Note:** The position must **not** exclude FEHB coverage.

**5 Federal Employees Group Life Insurance (FEGLI)**

**A FEGLI Coverage**

Employees who are put in a non-pay status while on active military duty may keep their FEGLI coverage for up to 12 months. This coverage is free.

At the end of 12 months in non-pay status, the coverage terminates. Employees get a free 31-day extension of coverage and the right to convert to a non-group policy.

If an employee with FEGLI is called to active military duty and is killed, death benefits are payable to the employee's beneficiaries. Accidental death and dismemberment benefits are also payable under basic insurance (and Option A, if the employee had that coverage) unless the employee was in actual combat at the time. Accidental death benefits are in addition to regular death benefits. Even if accidental death benefits are **not** payable, regular death benefits **are** payable.

**B FEGLI and Return to Active Civilian Service**

Employees who have been on active military duty, and return to active civilian service, retain the amount of life insurance he/she had before going into non-pay status.

**Note:** The position must **not** exclude FEGLI coverage.

## 6 Leave

### A Military Leave

Employees who are called to active military duty may request the use of some or all of their military leave entitlement, as specified in 5 U.S.C. 6323(a). Under the law, an eligible full-time employee is given 15 workdays (120 hours) of military leave each fiscal year. In addition, an employee may carry over up to 15 workdays (120 hours) of unused military leave from one fiscal year to the next. Maximum amount of regular military leave hours an employee may have available is 30 workdays (240 hours). Military leave hours in excess of 30 workdays (240 hours) are forfeited. Part-time career employees are provided military leave on a prorated basis. Once an employee's military leave and/or annual leave is exhausted, the employee will be on Military Furlough - Leave Without Pay (LWOP).

### B Annual Leave

Employees who perform active military duty may request the use of their earned annual leave (under 5 U.S.C. 6303 and 6304). See lump sum information in subparagraph D.

**Note:** Annual leave requests **must** be granted by the supervisor.

### C LWOP

When a full-time employee on active military duty is placed on LWOP, the employee loses **annual and sick leave accruals** in the pay period in which the employee reaches or exceeds an accumulation of 80 hours or any 80-hour increments thereafter.

**Note:** The 80 hour increment rule does **not** apply to part-time employees.

### D Lump-Sum Annual Leave Payments

Employees, entering active military duty in the armed forces, are entitled to either of the following:

- receive a lump-sum payment for their earned or accumulated annual leave
- have their annual leave remain to their credit until they return to their civilian position.

**Note:** Information on lump-sum leave payments may be found under 5 U.S.C. 5551 and 5552.

## 7 Retirement and Thrift Savings Plan (TSP)

### A Retirement

An employee who is placed on LWOP, while performing active military duty, continues to be covered by their retirement law; either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS); and the Foreign Service Retirement and Disability System (FSRDS) and the Foreign Service Pension System (FSPS).

**Note:** Death benefits will be paid as if he/she were still in the civilian position.

If the employee becomes disabled for his/her civilian position while on LWOP, and has the minimum amount of civilian service to qualify for disability benefits (5 years for CSRS and FSRDS, 18 months for FERS and FSPS), the employee will become entitled to disability benefits under the retirement law.

The period of military service is creditable toward retirement under either CSRS/FSRDS or FERS/FSPS, subject to the rules for crediting military service.

Employees who separate to enter active military duty, will generally receive retirement credit for the period of separation if the employee exercises restoration rights to his/her civilian position.

If separated employee does **not** exercise the restoration right, but later re-enters Federal civilian service, the military service may be credited under the retirement system, subject to the rules governing credit for military service. A service deposit may be due for the period of military service to be creditable.

### B TSP

Employees cannot make contributions to TSP, either by the agency or the employee, for any time in an LWOP status or for a period of separation. Employees should refer to TSP Fact Sheet titled, "Effect of Nonpay Status on TSP Participation". The fact sheet is available at <http://www.tsp.gov>.

If employees are subsequently re-employed in, or restored to, a position covered by FERS/FSPS or CSRS/FSRDS pursuant to 38 U.S.C. Chapter 43, they may make up missed contributions. However, if the employee contributed to TSP as a member of the uniformed services while on active duty, the amount the employee may make up will be offset by the amount contributed while performing active duty.

**7 Retirement and Thrift Savings Plan (TSP) (Continued)**

**B TSP (Continued)**

FERS/FSPS employees are entitled to receive retroactive Agency Automatic (1 percent) Contributions and, if they make up their own contributions, retroactive Agency Matching Contributions. Also, if FERS/FSPS employees separate and Agency Automatic (1 percent) Contributions and associated earnings are forfeited because they did **not** meet TSP vesting requirement, the employees are entitled to have these funds restored to their accounts after they are re-employed.

In addition, if employees separate and their accounts are disbursed as automatic cashouts, the employees may return to TSP an amount equal to the full amount of the payment after they are re-employed.

For additional information, see TSP Fact Sheet titled, “Benefits that Apply to Members of the Military Who Return to Federal Civilian Service” at <http://www.tsp.gov>.

**C LWOP and TSP Loans**

Because loan payments may only be made through payroll allotments, a period without pay will result in missed payments.

<b>IF...</b>	<b>THEN...</b>
payments are missed for 90 calendar days or less	loan payment schedule will be extended.
payments resume more than 90 calendar days from the last correct payments but less than 1 year from the start of the nonpay status	loan must be re-amortized.
if employee does <b>not</b> return to pay status within 1 year of the start of LWOP	employee will have to repay the loan in full by the end of the year of LWOP or be subject to a taxable distribution of the unpaid balance and any accrued interest.

## 8 Return to Civilian Duty

### A Re-Employment Limits for Returning to Civilian Duty

An employee who enters active military duty (voluntarily or involuntarily) from any position, including a temporary position, has full job protection, if he/she applies for re-employment within the following time limits:

- employees who served less than 31 calendar days must report back to work at the beginning of the next scheduled workday following their release from service and the expiration of 8 hours after a time for safe transportation back to the employee's residence
- employees who served more than 30 calendar days, but less than 181 calendar days, must apply for re-employment within 14 calendar days of release by the military
- employees who served more than 180 calendar days have 90 calendar days to apply for re-employment.

Employees who served less than 91 calendar days must be restored to the position for which qualified that they would have attained had their employment **not** been interrupted.

Employees who served more than 90 calendar days have essentially the same rights, except that the agency has the option of placing an employee in a position for which qualified of like seniority, status, and pay.

Upon return or restoration, an employee generally is entitled to be treated as though he/she had never left for purposes of rights and benefits based upon length of service. This means that the employee must be considered for career ladder promotions, and the time spent in the military will be credited for seniority, successive within-grade increases, probation, career tenure, annual leave accrual rate, and severance pay. An employee who was on a temporary appointment serves out the remaining time, if any, left on the appointment.

**Note:** The military activation period does **not** extend the civilian appointment.

An employee performing active military duty is protected from reduction-in-force (RIF) and may **not** be discharged from employment for a period of 1 year following separation (6 months in the case of a Reservist called to active duty under 10 U.S.C. 12304 for more than 30 calendar days, but less than 181 calendar days, or ordered to an initial period of active duty for training of **not** less than 12 consecutive weeks), except for poor performance or conduct or for suitability reasons.

**8 Return to Civilian Duty (Continued)**

**B Appeal Rights**

A Federal employee or former Federal employee of an agency in the executive branch (including the U.S. Postal Service) who is entitled to restoration in connection with military duty may appeal an agency's failure to properly carry out the law directly to the Merit Systems Protection Board (MSPB), or the employee may first submit a complaint to the Department of Labor, which will attempt to resolve it. If resolution is not possible, the Department may present the case to the Office of the Special Counsel, which may represent the Federal employee in an appeal to the MSPB. Appeals to MSPB must be submitted within 30 calendar days after the effective date of the action being appealed.

County Office employees shall appeal to the DAFO within 30 calendar days after the effective date of the action being appealed.